Calendar No. 2394

84TH CONGRESS, 2d Session | SENATE | REPORT No. 2371

CLYDE M. LITTON

JUNE 27, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1072]

The Committee on the Judiciary, to which was referred the bill (H. R. 1072) for the relief of Clyde M. Litton, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the sum of $1,175.34 to Clyde M. Litton, of Los Angeles, Calif., in full settlement of all his claims against the United States, arising out of the fact that through an administrative error on the part of officials of the Army, he was not formally transferred from the Infantry Reserve to the Air Corps Reserve effective February 22, 1943, upon his completion of advanced glider training.

STATEMENT

The facts are fully set forth in House Report No. 1294 of the 83d Congress, 2d session, which is appended hereto and made a part of this report. Your committee concurs in the favorable recommendation of the Department of the Army.

[H. Rept. No. 1294, 83d Cong.]

The purpose of the proposed legislation is to pay the sum of $1,175.34 to Clyde M. Litton, of Los Angeles, Calif., in full settlement of all his claims against the United States, arising out of the fact that, through an administrative error on the part of officials of the Army, he was not formally transferred from the Infantry Reserve to the Air Corps Reserve effective February 22, 1943, upon his completion of advanced glider training.

STATEMENT OF FACTS

The Department of the Army, in its report dated October 2, 1953, gives in detail the history of this proposed legislation.

After careful consideration, the committee concurs in the recommendation of the Department of the Army, and the bill is amended to conform with its recommendations.

The report of the Department of the Army is as follows:

DEPARTMENT OF THE ARMY,
Washington 25, D. C., October 2, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 3672, 83d Congress, a bill for the relief of Clyde M. Litton, and requesting a report on the merits of the bill.

The bill provides as follows:

"That the Secretary of the Treasury is hereby authorized and directed to pay out of any money in the Treasury not otherwise appropriated, to Clyde M. Litton, of Los Angeles, Calif., the sum of $1,175.89. The payment of such sum shall be in full settlement of all claims of the said Clyde M. Litton against the United States arising when, by reason of administrative error on the part of officials of the Army, he was deprived of benefits to which he was entitled under section 2 of the Act entitled 'An Act to increase the efficiency of the Air Force,' approved June 16, 1936, as amended (10 U. S. C., sec. 300a)."

Section 300a, title 10, of the United States Code (referred to in H. R. 3672), provides, in pertinent part, as follows:

"Whenever any Air Corps Reserve officer who has not been selected for commission in the Regular Army is released from active duty that has been continuous for 1 or more years, he shall be paid a lump sum of $500 for each complete year of active service as such officer, and if released from active duty otherwise than upon his own request, or as a result of inefficient or unsatisfactory service as determined by the Secretary of the Army, such lump-sum payment shall be prorated for fractional parts of each year of such active service. The lump-sum payments authorized by this section shall be in addition to any pay, allowances, compensation, or benefits which such officers may otherwise be entitled to receive."

The records of the Department of the Army show that Clyde M. Litton was born in Los Angeles, Calif., on February 13, 1917; and that he was commissioned a second lieutenant of infantry in the Officers' Reserve Corps, Army of the United States, on July 28, 1938, following his graduation from the University of California at Los Angeles and the completion of the Reserve officers' training course at that institution. He was given Army Serial No. O370917. He was ordered to active duty in the Army effective July 15, 1941, and was assigned to duty with the 79th Pursuit Squadron, Army Air Corps, Hamilton Field, Calif., where his duties did not require him to participate in regular or frequent aerial flights. On August 22, 1941, he was promoted to the grade of first lieutenant of Infantry in the Officers' Reserve Corps.

On June 30, 1942, Lieutenant Litton began a course in preglider training with the 27th Army Air Forces Glider Training Detachment at Lonoke, Ark., and upon the successful completion of such course on August 20, 1942, he was transferred to the Blackland Army Flying School, Waco, Tex., for basic glider training. He successfully completed basic glider training at the Blackland Army Flying School on October 10, 1942. He was thereupon transferred to the Army Air Forces Advanced Glider School at Dalhart, Tex., for advanced glider training, which he completed on February 22, 1943. Following the completion of such training Lieutenant Litton was awarded the rating of "Glider Pilot," effective February 27, 1943. Thereafter he was required to participate in regular and frequent aerial flights.

Upon his completion of advanced glider training on February 22, 1943, Lieutenant Litton was issued an official United States Army Forces identification card, which certified that "Clyde Martin Litton has been appointed first lieutenant in the Army Air Forces of the Army of the United States commencing February 22, 1943," and that he was "Rated Glider Pilot." Subsequent to that time official War Department orders and communications referred to Lieutenant Litton's branch of the service as "Air Corps" and "Air Corps Reserve." In official communications and documents signed by Lieutenant Litton after that date he identifies his branch of the service as "Air Corps."

After Lieutenant Litton had completed his glider pilot training he was assigned to duty with various Army Air Forces units in the United States, where he received further glider tactical training before he was sent overseas in May 1944 for service in the European theater of operations. In all such assignments he participated in aerial flights, either as a glider pilot or in powered aircraft. While overseas his principal duty was that of glider pilot. He also flew as a copilot while doing aerial supply work and in the evacuation of liberated prisoners of war. He was awarded the Air Medal for participation as pilot of a troop-carrier glider in a combat airborne operation in Holland between September 17–23, 1944. He returned to the United States on July 26, 1945, and was relieved from active duty in the Army on February 4, 1946, because of general demobilization. The certificate of service issued to him at the time he was relieved from active duty states his branch of service as "AC Res" (Air Corps Reserve).

At the time Lieutenant Litton was undergoing glider pilot training, as well as at the time he completed such training in February 1943, it was the policy of the Army Air Forces to recommend for transfer to the Air Corps Reserve those officers who held commissions in other branches of the Officers' Reserve Corps upon their completion of said training. This policy was made known to those officers undergoing such training. In accordance with a directive, dated January 18, 1943, the commanding officer of the glider school where Lieutenant Litton completed his advanced glider training should have submitted, 30 days before such training was completed, a recommendation to the Adjutant General of the Army that this officer be transferred from the Infantry Reserve to the Air Corps Reserve. The records of the Department of the Army fail to disclose that any such recommendation for the transfer of Lieutenant Litton to the Air Corps Reserve was ever made to or received by the Adjutant General of the Army, in whose office all such transfers were duly accomplished. Inasmuch as

no recommendation for the transfer of Lieutenant Litton to the Air Corps Reserve was ever received in the office of the Adjutant General, the formal transfer of this officer to the Air Corps Reserve was never accomplished. His legal status in the Army, therefore, continued to remain that of a first lieutenant in the Infantry Reserve.

On March 22, 1943, all transfers to and appointments in the Air Corps Reserve, except for aviation cadets enlisted or appointed as such prior to July 8, 1942, were suspended by a War Department directive. It was not then necessary that an officer hold a commission in the Air Corps Reserve to be eligible for the rating of glider pilot, or any other aeronautical rating, or to be placed on duty involving flying. Under then existing regulations, officers, warrant officers, flight officers, and enlisted men of the Army of the United States were eligible for aeronautical ratings.

The glider pilot training in which Lieutenant Litton participated was a new program and of short duration. It began in May 1942, and recruitments therefor were discontinued in November 1942. It is quite possible that the commanding officer of the advanced glider school at which Lieutenant Litton completed his glider training failed to recommend him for transfer to the Air Corps Reserve through administrative error. It is apparent that, following the completion of his glider training on February 22, 1943, Lieutenant Litton regarded himself as an officer of the Air Corps Reserve, honestly believing that his transfer to the Air Corps Reserve had been legally accomplished effective that date. His belief in this respect was quite reasonable, inasmuch as official Army documents thereafter referred to him as an Air Corps Reserve officer, and he was issued an official identification card as such. In the light of all the facts in this case it would appear that the failure to transfer Lieutenant Litton from the Infantry Reserve to the Air Corps Reserve resulted solely from an administrative error, and was not caused by any disqualification or negligence on his part. Had such a transfer been effected on February 22, 1943, in accordance with the policy then existing, Lieutenant Litton would have been entitled to receive the lump-sum payment provided for in 10 United States Code 300a.

It appears that upon his release from active duty in the Army, Lieutenant Litton made claim for a lump-sum payment to him under the provisions of section 300a, title 10, United States Code, of the sum of $1,475.89, covering the period of his Army service from February 22, 1943 (the date he completed advanced glider training), to February 4, 1946 (the date of his release from active duty in the Army), which claim was necessarily denied for the reason that he was not an Air Corps Reserve officer. Subsequently he was paid mustering-out pay in the sum of $300. Section 691a, title 38, United States Code, provides that mustering-out pay shall not be paid to "any Air Corps Reserve officer who is entitled to receive a lump-sum payment under section 300a of title 10." Lieutenant Litton, accordingly, has reduced his claim against the Government in the amount of $300, making the amount now claimed by him in H. R. 3672 the sum of $1,175.89.

In view of the particular facts and circumstances in this individual case the Department of the Army is of the opinion that Lieutenant Litton is equitably entitled to receive the lump-sum payment which he would have received upon his release from active duty in the Army

had he been transferred to the Air Corps Reserve on February 22, 1943 (the date he completed advanced glider training), less the sum of $300 paid to him as mustering-out pay. For the purpose of accuracy, however, the amount of the award provided in H. R. 3672 should be changed to $1,175.34. The Department of the Army, therefore, would have no objection to the enactment of this bill if the text thereof should be amended to read as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Clyde M. Litton, of Los Angeles, California, the sum of $1,175.34. The payment of such sum shall be in full settlement of all claims of the said Clyde M. Litton against the United States arising out of the fact that, through an administrative error on the part of officials of the Army, he was not formally transferred from the Infantry Reserve to the Air Corps Reserve effective February 22, 1943, upon his completion of advanced glider training, and was thus deprived of the benefits to which he would have been entitled under section 2 of the Act entitled 'An Act to increase the efficiency of the Air Corps', approved June 16, 1936 (49 Stat. 1524), as amended (10 U. S. C., sec. 300a), had he been so transferred: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

JANUARY 18, 1943.

Subject: Transfer of officers training in grade to Air Corps Reserve.
To: Commanding General, Air Forces Flying Training Command, Fort Worth, Tex.

1. Letters this headquarters (AFPMP-7)-1T, dated September 1, 1942, respectively, subject: "Transfer of Officers Training in Grade to Air Corps Reserve", copies attached, are revoked and the following substituted therefor:

2. The following instructions apply to all officers and warrant officers undergoing Flying Training Command courses leading to an aeronautical rating.

3. It is directed that—

(*a*) Officers holding commissions in the Army of the United States, only, who undergo a Flying Training Command course with the Army Air Forces, will not be transferred to the Air Corps Reserve after completion of training, but will remain in the AUS component.

(*b*) All officers holding commissions in the Officers Reserve Corps (other than Air Corps Reserve) or National Guard of the United

States will be transferred to the Air Corps Reserve after completion of a Flying Training Command course.

(*c*) Warrant officers who undergo a Flying Training Command course with the Army Air Forces will be commissioned second lieutenants, AUS, after completion of training.

4. It is requested that all officers and warrant officers now undergoing training in grade be advised of the above Army Air Force policy.

5. In order to comply with paragraph 3 (*b*) above, it is directed that, thirty (30) days prior to the date of graduation, the Commanding Officers of Advanced Flying Training Command courses will forward a letter of recommendation for transfer for each Reserve or National Guard officer undergoing training in grade to the Adjutant General, Attention: Officers Branch, Washington, D. C., as follows:

"It is recommended that (name, grade, component, serial number), (be transferred to the Air Corps Reserve) (be granted vacation appointment in Air Corps Reserve) effective (date of graduation), subject to successful completion of (name of course) training. This officer will qualify for the rating of (type of rating) upon satisfactory completion of the (name of course) training course at (school) on (date). Upon being (transferred to the Air Corps Reserve) (granted a vacation appointment in the Air Corps Reserve), he will be so rated."

6. Words applicable to each officer will be filled in in the above recommendation for transfer to Air Corps Reserve. Those Reserve officers training in grade who hold appointments in components, other than Air Corps Reserve, of the Officer Reserve Corps will be transferred to the Air Corps Reserve, effective date of graduation from a Flying Training Command course. Those officers training in grade who hold commissions in the National Guard of the United States will be tendered vacation appointments in the Air Corps Reserve, effective upon date of graduation from a Flying Training Command course.

7. If a Reserve officer holds a commission in the Air Corps Reserve, no recommendation should be submitted to the Adjutant General, as no change in commission status is involved.

8. Letters of transfer or appointment will be prepared by the Adjutant General and forwarded to the Commanding Officer of the school for delivery to the officers successfully completing the course. Letters not delivered will be returned without delay to the Adjutant General with a statement of reason for nondelivery.

By command of Lieutenant General Arnold:

J. M. BEVANS,
Colonel, Air Corps, Director of Personnel.
By WILLIAM W. BEASLEY,
Major, Air Corps, Assistant Chief, Aviation Cadet Section, Military Personnel Division, OD P.

CULVER CITY, CALIF., *March 9, 1946.*

The ADJUTANT GENERAL,
Army of the United States,
Washington 25, D. C.

1. February 4, 1946, I was relieved from active duty with the Army Air Forces at the Santa Ana Army Airbase, Santa Ana, Calif. Shortly thereafter I was informed by mail that my application for lump-sum

bonus paid to Air Corps Reserve officers had been rejected because of a statement of service from your office showing me to be a First Lieutenant, Infantry Reserve.

2. I was transferred from Infantry Reserve to Air Corps Reserve on or about February 22, 1943, as evidenced by the enclosed photostatic copy of the identification card issued by Headquarters Gulf Coast Training Center (now Flying Training Command). Orders commissioning me and other Reserve officer members of the class 43–4 at South Plains Army Flying School, Lubbock, Tex., were requested by the officers concerned, who were informed by the base adjutant that the matter was handled solely by Randolph Field and Washington, and that copies of the orders were not available at South Plains. Evidently, the identification card was intended to serve in lieu of orders, for convenience, and to be used in the same way as the AGO card.

3. In further evidence of the transfer of all Reserve officers in my flying training class to Air Corps Reserve, enclosed are 2 sets of orders, 1 issued before February 22, 1943, and the other issued after that date. It will be noted that the orders amending those dated February 1, 1943, list student officers in the branches in which they served prior to entry into flying training. Although I was an Infantry Reserve officer, I had been assigned to the Army Air Force in an administrative capacity, and therefore was listed "AC." The orders dated February 27, 1943, indicate that the officers concerned were in Air Corps Reserve as of that date, "in compliance with instructions contained in GC 12Ue 276, dated February 22, 1943." I do not know exactly what "GC 12UE 276" is, but believe it to be, or to be connected with, the orders transferring the listed officers to Air Corps Reserve.

4. It is urgently requested that the Adjutant General expedite an investigation to correct records concerning the undersigned, and that the finance officer, Santa Ana Army Airbase, and I be informed of the results as soon as practicable, as I was relieved from active duty more than a month ago and my account is not yet settled.

CLYDE M. LITTON,
First Lieutenant, Air Corps Reserve, O370917.

Three enclosures.

CULVER CITY, CALIF., *March 25, 1946.*

Subject: Transfer of officer from Infantry Reserve to Air Corps Reserve.

To: The Adjutant General, Army of the United States, Washington, D. C.

1. Communication to your office dated March 9, 1946, has not been answered, and as the finance office concerned will close permanently March 31, 1946, according to information available here, it is believed advisable to request action on the part of the Adjutant General in order to settle my financial account at the Santa Ana Army Airbase, Santa Ana, Calif.

2. Upon receipt of statement of service which did not show my transfer to Air Corps Reserve February 22, 1943, I sent a message to Chief, 8th Service Command Records Depot, San Antonio Army Services Forces Depot, Grayson Street Station, San Antonio 8, Tex., requesting that orders indicating transfer of my commission be forwarded to me, as at time of graduation from flight training no orders

were issued to personnel concerned, although apparent authority for transfer, "GC 12UE 276," was quoted, and identification cards showing the appointment of the bearers to Air Corps Reserve were issued by the Gulf Coast Training Center, now Flying Training Command.

3. It is requested that I be informed whether the official identification card, dated February 22, 1943, and showing my appointment in the Army Air Forces Reserve (now Air Corps Reserve) will be accepted by the Adjutant General as valid evidence of such appointment.

CLYDE M. LITTON,
First Lieutenant, Air Corps Reserve, 0370917.

CULVER CITY, CALIF., *March 9, 1946.*

CHIEF OF EIGHTH SERVICE COMMAND RECORDS DEPOT,
San Antonio Army Service Forces Depot,
Grayson Street Station, San Antonio 8, Tex.

1. February 14, 1946, I sent telegraphic message to CG, Flying Training Command, Randolph Field, Tex., requesting confirmation of my transfer from Infantry Reserve to Air Corps Reserve on or about February 22, 1943. Proof of this transfer is needed to support my claim for the lump-sum bonus paid to Air Corps Reserve officers upon relief from active duty. Reply from HQ Flying Training Command stated that message had been forwarded to your office.

2. The following information is offered to help in search for the orders in question:

Enclosed are two sets of orders, one issued before February 22, 1943, and the other issued after that date. It will be noted that orders dated February 1, 1943, list student officers in the branches in which they served prior to assignment to the Flying Training Command. Although I was an Infantry Reserve officer, I had been assigned to AAF in an administrative capacity. The orders dated February 27, 1943, show that all the officers concerned were in Air Corps Reserve as of that date, "in compliance with instructions contained in GC 12UE 276, dated February 22, 1943." I believe that "GC 12UE 276" is, or is related to, orders transferring me and the other officers listed to Air Corps Reserve, although I have not seen it.

The date of "GC 12UE 276" is the same as that of the identification card, a photostatic copy of which is enclosed which identifies me as a first lieutenant, Army Air Forces Reserve (now Air Corps Reserve). This card was issued by Headquarters Gulf Coast Training Center (now Flying Training Command). When orders evidencing transfer were requested, officers concerned were informed by the adjutant of South Plains Army Flying School, Lubbock, Tex., that the transfer was handled entirely between Randolph Field and Washington, that copies of the orders were not available at South Plains, and that the identification card was issued to serve in place of orders for convenience of the user.

It is requested that the necessary information be forwarded to me as soon as possible, as I was relieved from active duty February 4, 1946, and my account at Santa Ana Army Airbase is not yet settled.

CLYDE M. LITTON,
First Lieutenant, Air Corps Reserve, 0370917.

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Calendar No. 2396

84TH CONGRESS, 2d Session | SENATE | REPORT No. 2373

CAMP KOOCH-I-CHING

JUNE 27, 1956.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 5690]

The Committee on Interstate and Foreign Commerce to whom was referred the bill (H. R. 5690) for the relief of Camp Kooch-I-Ching, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The bill would permit the 45-foot motorboat, *Kooch-I-Ching II*, Coast Guard No. 36 D 675, owned and operated by Camp Kooch-i-ching, at International Falls, Minn., to be documented under the laws of the United States, despite the fact that it was built outside the United States.

The boat in question was built at Fort Francis on the Canadian side of Rainy Lake, where Camp Kooch-i-ching is located. It was purchased by the camp in 1951, to replace the boat then in use for transportation of campers and camp personnel, baggage, etc. It was registered by the Coast Guard on June 4, 1951, as a pleasure vessel, the same classification under which the predecessor vessel was registered. In 1954, however, the Coast Guard decided that the boat was subject to regulation by the Coast Guard and the Bureau of Customs as a commercial vessel.

The bill was amended in the House to meet the objections of the Department of Commerce, by restricting the vessel to "the transportation of merchandise, personnel and guests of Camp Kooch-i-ching located on Rainy Lake, International Falls, Minn., in the coastal and intercoastal waters, in which the boat is not now permitted to operate by reason of having been built outside the United States."

The departmental reports are as follows:

THE SECRETARY OF COMMERCE,
Washington, D. C., November 15, 1955.

Hon. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in reply to your request dated April 22, 1955, requesting the views of this Department with respect to H. R. 5690, a bill for the relief of Camp Kooch-i-ching.

The bill provides that notwithstanding the provisions of the statutes (46 U. S. C., secs. 11 and 883), the motorboat *Kooch-i-ching II*. identification No. 36D675, owned and operated by Camp Kooch-i-ching, located on Rainy Lake, International Falls, Minn., shall not be precluded from being documented under the laws of the United States, nor from engaging in the coastwise trade of the United States, by reason of having been built outside this country.

This boat was built in Canada, according to our information. Under sections 11 and 883, above mentioned, this boat could not be documented under the laws of the United States nor engage in the coastwise trade of the United States.

We are advised that it is not intended to have this boat engage in coastwise trade, but to operate it for the purpose of transporting personnel and guests of the camp.

The bill should therefore be amended by striking out the lines 12 and 13 and substituting in lieu thereof the following: "the transportation of personnel and guests of Camp Kooch-i-ching located on Rainy Lake, International Falls, Minnesota, in the coastal and intercoastal waters, in which the boat is not now permitted to operate by reason of having been built outside the United States."

This Department would interpose no objection to enactment of H. R. 5690, amended as suggested.

Budget Bureau has advised that it would interpose no objection to submission of this report to the committee.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

TREASURY DEPARTMENT,
Washington 25, June 3, 1955.

Hon. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
United States House of Representatives,
Washington 25, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of April 22, 1955, requesting a statement of this Department's views on H. R. 5690, a bill for the relief of Camp Kooch-i-ching.

The proposed legislation would in effect permit Camp Kooch-i-ching, an incorporated camp for boys on Rainy Lake, International Falls, Minn., to document the gas screw *Kooch-I-Ching II*, now operated under Coast Guard No. 36 D 675, for use in the transportation of merchandise and passengers between points in the United States embraced within the coastwise laws, notwithstanding the fact that it was built in a foreign country having been constructed in Canada.

The statutory limitations contained in section 4132 of the Revised

Statutes of the United States, as amended, and section 27 of the Merchant Marine Act, 1920, as amended (U. S. Code, 1952 edition, title 46, secs. 11, 883), which the bill seeks to overcome, are applicable to all vessels built in a foreign country. If enacted, therefore, the bill would confer upon Camp Kooch-i-ching, Inc., a privilege not available to other citizens. Whether such an exception should be enacted is a matter of legislative policy on which this Department expresses no opinion.

There is considerable question whether the present language would exempt any subsequent purchaser from the statutory restriction upon the vessel's use. There is attached a memorandum setting forth suggested substitute language.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

MEMORANDUM ACCOMPANYING THE REPORT ON H. R. 5690

It is suggested that the bill H. R. 5690 be amended by striking all after the enacting clause and inserting in lieu thereof the following:

"That notwithstanding the provisions of section 4132 of the Revised Statutes of the United States, as amended, and section 27 of the Merchant Marine Act, 1920, as amended (U. S. Code, 1952 ed., title 46, secs. 11, 883), the Secretary of the Treasury is authorized and directed to cause the gas screw *Kooch-I-Ching II*, Coast Guard number 36 D 675, now owned by Camp Kooch-i-ching, Inc., to be documented as a vessel of the United States with full coastwise privileges, upon compliance with the usual requirements for documentation, so long as the vessel is owned, and shall continue to be owned by a citizen of the United States, and the said vessel *Kooch-I-Ching II* shall be deemed to be entitled to engage in such trade so long as it is so documented."

There are no changes in existing law.

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Calendar No. 2397

84TH CONGRESS, 2d Session | SENATE | REPORT No. 2374

MARY C. FREDERICK

JUNE 27, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1450]

The Committee on the Judiciary, to which was referred the bill (S. 1450) for the relief of Mary C. Frederick, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to authorize and direct the Veterans' Administration to pay to Mary C. Frederick, the widow of Alex J. Frederick (XC–11542142), a sum equal to the amount which would have been payable to her as death benefits for the period beginning March 24, 1950, and ending on May 2, 1952, on account of the death of the said Alex J. Frederick, had her application for such benefits been filed within 1 year from the date of the death of her husband.

STATEMENT

Alex J. Frederick, XC–11542142, a World War II veteran, died on March 23, 1950. On May 2, 1952, the veteran's widow, Mrs. Mary C. Frederick, was assisted by an employee of the Veterans' Administration Office, Minot, N. Dak., in executing an application for compensation or pension, which she filed with that office on the same day. On the basis of that application an award of service-connected death compensation, effective May 2, 1952, was made to her, as the unremarried widow, for herself and three minor children. Under that award the amount of $179 monthly is currently going forward to her.

Mrs. Frederick has contended, however, that the award should have been made retroactive to the date of death of the veteran, March 23, 1950, stating that a named veterans' service officer to whom she had directed an inquiry shortly after the death, furnished her incorrect advice and "neglected to look into" the matter, which resulted in her

failure to prosecute a claim at that time. The Veterans' Administration informed her or her representative, among other things, to the effect that under existing law the date of commencement of an original award of death compensation is the day following the date of the serviceman's death if application is filed within 1 year from the date of death, otherwise from the date of filing application; that since Mrs. Frederick's application was not received by the Veterans' Administration within the 1 year period the award was commenced as of the date of filing of her application in the Veterans' Administration; and that payment of death compensation for any period prior to the date of receipt of her application is not authorized.

It is the purpose of S. 1450 to pay Mrs. Frederick retroactive death compensation from March 24, 1950, the day following the date of the veteran's death, to May 2, 1952, the date on which her application was filed in the Veterans' Administration. Since, under the award, she has already been paid compensation for the day of May 2, 1952, it is assumed that the bill intends that payment be made only through May 1, 1952. The total amount of death compensation which would be payable for such period would be $3,916.32.

Under the applicable law and regulations there is no limitation on the time within which application may be made for death compensation, but benefits are payable from the day following the date of a veteran's death if application is filed in the Veterans' Administration within 1 year after the date of death. If claim is not filed within such period, death benefits are payable prospectively from the date of application. In view of these rules, and the fact that Mrs. Frederick's application was not filed with the Veterans' Administration until May 2, 1952, which was more than 1 year after the date of the veteran's death, the award of death compensation was properly commenced on such date.

Concerning the service officer referred to by Mrs. Frederick, information available in the Veterans' Administration indicates that he was then, and is now, a service officer of the State of North Dakota, Department of Veterans' Affairs, Rolla, N. Dak. The Veterans' Administration has no knowledge as to Mrs. Frederick's alleged contract with that State employee.

Your committee believes that the circumstances in this case are such as to warrant a favorable recommendation. The claimant is a wife of an Indian, unlettered in the law, and rightfully in her case relied upon the false information supplied her. To charge her with knowledge of the intricate regulations of the Veterans' Administration would seem to be an unnecessarily harsh burden.

Attached here and made a part of the report is the report of the Veterans' Administration as follows:

JUNE 3, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR KILGORE: This has further reference to your request for a report by the Veterans' Administration on S. 1450, 84th Congress, a bill for the relief of Mary C. Frederick, which provides as follows:

"That the Administrator of Veterans' Affairs is authorized and directed to pay to Mary C. Frederick, the widow of Alex J. Frederick

(XC–11542142), a sum equal to the amount which would have been payable to her as death benefits for the period beginning March 24, 1950, and ending on May 2, 1952, on account of the death of the said Alex J. Frederick, had her application for such benefits been filed within 1 year from the date of the death of her husband."

Alex J. Frederick, XC–11542142, a World War II veteran, died on March 23, 1950. On May 2, 1952, the veteran's widow Mrs. Mary C. Frederick, was assisted by an employee of the Veterans' Administration Office, Minot, N. Dak., in executing an application for compensation or pension, which she filed with that Office on the same day. On the basis of that application an award of service-connected death compensation, effective May 2, 1952, was made to her, as the unremarried widow, for herself and three minor children. Under that award the amount of $179 monthly is currently going forward to her.

Mrs. Frederick has contended, however, that the award should have been made retroactive to the date of death of the veteran, March 23, 1950, stating that a named veterans' service officer to whom she had directed an inquiry shortly after the death, furnished her incorrect advice and "neglected to look into" the matter, which resulted in her failure to prosecute a claim at that time. The Veterans' Administration informed her or her representative, among other things, to the effect that under existing law the date of commencement of an original award of death compensation is the day following the date of the serviceman's death if application is filed within 1 year from the date of death, otherwise from the date of filing application; that since Mrs. Frederick's application was not received by the Veterans' Administration within the 1 year period the award was commenced as of the date of filing of her application in the Veterans' Administration; and that payment of death compensation for any period prior to the date of receipt of her application is not authorized.

It is the purpose of S. 1450 to pay Mrs. Frederick retroactive death compensation from March 24, 1950, the day following the date of the veteran's death, to May 2, 1952, the date on which her application was filed in the Veterans' Administration. Since, under the award, she has already been paid compensation for the day of May 2, 1952, it is assumed that the bill intends that payment be made only through May 1, 1952. If the bill is enacted, the total amount of death compensation which would be payable for such period would be $3,916.32.

Under the applicable law and regulations there is no limitation on the time within which application may be made for death compensation, but benefits are payable from the day following the date of a veteran's death if application is filed in the Veterans' Administration within 1 year after the date of death. If claim is not filed within such period, death benefits are payable prospectively from the date of application. In view of these rules, and the fact that Mrs. Frederick's application was not filed with the Veterans' Administration until May 2, 1952, which was more than 1 year after the date of the veteran's death, the award of death compensation was properly commenced on such date.

Concerning the service officer referred to by Mrs. Frederick, information available in the Veterans' Administration indicates that he was then, and is now, a service officer of the State of North Dakota, Department of Veterans' Affairs, Rolla, N. Dak. The Veterans' Administration has no knowledge as to Mrs. Frederick's alleged contact

with that State employee. However, it should be noted that he was the agent of Mrs. Frederick and not of the Veterans' Administration. Further, any alleged failure on the part of a State employee is not believed to afford a basis for the Federal Government to grant the relief proposed by S. 1450.

The circumstances of the case have been carefully considered. No reason is apparent why it should be singled out for special legislative treatment by authorizing payment of death compensation from an earlier date than is permitted by general law. To grant legislative relief in this case would be discriminatory against others in the same or similar circumstances, and might form a precedent for similar relief in other cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

H. V. HIGLEY, *Administrator.*

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